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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Sections 3(n) and 332) GN Docket No. 93-252
of the Communications Act, Regulatory)
Treatment of Mobile Services)

To: The Commission

REPLY COMMENTS OF TWO WAY RADIO OF CAROLINA, INC.

Two Way Radio, of Carolina, Inc. ("2-Way"), by its attorneys and pursuant to Rule Section 1.415, submits its Reply Comments to the Comments filed in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.^{1/}

I. Background

1. 2-Way provides commercial mobile service within North Carolina. It therefore has an important interest in this proceeding.

2. In recognition of the need to foster equal regulatory treatment of the wireless telecommunications industry, Congress included in the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"), certain amendments to the Communications Act of 1934, as amended, to require regulatory parity among commercial mobile service providers.^{2/} At Congress's direction, the Commission on September 23, 1993, initiated this proceeding to implement that Congressional mandate.

^{1/} See Regulatory Treatment of Mobile Services, FCC 93-454, 58 Fed. Reg. 53169 (October 8, 1993) ("NPRM").

^{2/} Pub. L. No. 103-66, Title VI, Section 6002(b), 107 Stat. 312, 392 (1993).

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3. The Commission sought comments on whether it should amend its rules to permit existing common carriers which are classified as commercial mobile service providers^{3/} to furnish dispatch service.^{4/} Sixteen of the 20 commentors who specifically addressed this issue were in favor of the Commission's proposal to remove the dispatch prohibition.^{5/} The rules currently prohibit common carriers from providing dispatch services.^{6/} However, Congress, through the Budget Act, has given the Commission discretion to terminate the dispatch prohibition if it finds it in the public interest to do so.^{7/} 2-Way submits these comments in support of

^{3/} Under the proposed regulatory scheme, a service provider will be considered a commercial mobile service provider if it provides the service for profit, and if it makes interconnected service available "to the public" or "to such classes of eligible users as to be effectively available to a substantial portion of the public." See NPRM at para. 10.

^{4/} See NPRM at para. 42.

^{5/} Parties submitting Comments in favor of lifting the dispatch prohibition were: Arch Communications, the Bell Atlantic Companies, Cellular Telephone Industry Association, GTE, MCI Telecommunications Corporation, Motorola, New Par, NYNEX, Pacific Bell and Nevada Bell, the Rural Cellular Association, Southwestern Bell, Telephone and Data Systems, Inc., Telocator, U.S. West, the Utilities Telecommunications Council, and Waterway Communications System. Inc. Those parties who argued for retaining the common carrier dispatch prohibition are the American Mobile Telecommunications Association, E.F. Johnson and Company, Geotek, and Nextel.

^{6/} Rule Section 22.519(a) states, "No new dispatch stations or dispatch points will be permitted. A common carrier which had authority to provide dispatch service prior to January 1, 1982, may continue to provide such service." Rule Section 22.911 extends this prohibition to the cellular service.

^{7/} See 47 U.S.C. Section 332(c)(2). The Commission defines dispatch service as "[two]-way voice communication, normally of not more than one minute's duration, that is transmitted
(continued...)

the Commission's proposal to terminate the dispatch prohibition, and emphasizes that should the Commission do so, it should allow dispatch service on all common carrier frequencies, including existing PLMS two way channels.

II. The Prohibition Has Outlived Its Usefulness.

4. There is no technical or competitive reason to retain the prohibition on common carrier provision of dispatch service. The dispatch prohibition was implemented to foster growth in the mobile phone industry by reserving the 150/450 MHz frequencies for mobile telephone traffic.^{8/} As the cellular industry came into being and began competing with mobile phone service, many conventional mobile phone service customers switched to cellular service. This migration left frequencies once reserved for mobile phone service substantially under-utilized. As a result, the private business radio frequencies in the 461-464 MHz bands, over which dispatch service is provided, are congested, while capacity on the 150/450 MHz common carrier two way frequencies remains available. As MCI noted in its Comments, "with recent reallocation of over 160 MHz of spectrum to PCS, the spectrum scarcity rationale for the dispatch restriction...is no longer tenable."^{9/} If anything, permitting common carriers to provide dispatch service will further the

^{7/}(...continued)

between a dispatcher and one or more land mobile stations, directly through a base station, without passing through the mobile telephone switching facilities." 47 CFR Section 22.2.

^{8/} See 47 U.S.C. §322(c)(2), H.R. Rep. No. 765, 97th Congress, 2nd. Sess, 55-56, (1982).

^{9/} See Comments of MCI, page 7.

Commission's long standing policy of promoting efficient use of spectrum by relieving some of the congestion on overused frequencies, while making more efficient use of those frequencies which are underused.

III. Removal Of The Dispatch Prohibition Will Promote Competition.

5. Permitting radio common carriers to provide dispatch service along with the existing conventional mobile phone services will give users a competitive alternative and lower cost option to cellular and SMR service. Provision of dispatch services over 150/450 MHz channels is less expensive to the end user than cellular or SMR dispatch service. Allowing common carriers to provide dispatch services will serve the public interest by increasing competition in this market and expanding the options available to consumers. Providers of commercial mobile services will be able to make more efficient use of spectrum by using extra capacity to provide additional services. Permitting the provision of auxiliary services will also encourage licensees to develop advanced digital technologies which can significantly increase capacity.^{10/} Additionally, the SMR industry is rapidly maturing into a strong competitor to cellular service. As competition grows between SMR and cellular providers, SMR and cellular frequencies will become more and more congested with interconnected calls. Thus, if radio common carriers are permitted to provide dispatch service over frequencies reserved for mobile telephone service, the

^{10/} See Comments of Telocator, page 16.

congestion over frequencies used by SMR and cellular might be eased.

6. On the other hand, failure to remove the prohibition will severely hinder competition in the dispatch services market. Eligibility constraints impair competition by preventing certain mobile service providers from entering additional lines of business and will frustrate regulatory parity by imposing different requirements on different types of providers. Users will not be able to benefit from being able to obtain dispatch services from the same providers that provide a full range of other services. As US West points out, "continuation of the restriction will lead to perverse results. It would allow 'private' carriers to continue to assert that only they can 'uniquely' provide an integrated package of services which include 'private radio services' (dispatch) when the only reason they can make this claim is due to artificial restraints imposed by outmoded regulation."^{11/}

^{11/} See Comments of US West, page 24.

IV. Conclusion.

As set forth above, the dispatch prohibition is anti-competitive and out-moded. Accordingly, the Commission should terminate the prohibition on common carrier provision of dispatch service.

Respectfully submitted,

TWO WAY RADIO OF CAROLINA, INC.

By: Al Guin
Al Guin, President

Date: 11/23/93

Certification

This will certify, on penalty of perjury, that all representations made above are true and correct to the best of my knowledge.

By: Al Guin
Al Guin, President,
Two Way Radio of Carolina, Inc.

Date: 11/23/93

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